APPENDIX "A"

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

No. 208046

WARD M. MILLER,

Plaintiff,

vs.

DOCTOR ROBERT A. HAINES, Director, Department of Mental Hygiene and Correction, State of Ohio and WALTER S. BURKE, Supervisor, Bureau of Support Department of Mental Hygiene and Correction, State of Ohio,

Defendants.

AMENDED PETITION

1. Plaintiff is and has been at all times referred to herein a citizen and taxpayer of the State of Ohio, presently residing at 562 Butler Avenue in the City of Columbus, County of Franklin in said State of Ohio.

2. Defendant Haines is the Director of the Department of Mental Hygiene and Correction in the State of Ohio and as the superior of Defendant Burke, has control and executive discretion over the administration and policy of the Bureau of Support which is a division of the Department of Mental Hygiene and Correction.

3. Defendant Burke was for many years, the supervisor of said Bureau of Support within the Department of Mental Hygiene and Correction of the State of Ohio; and as such supervisor, it was his duty to carry out the policies of the Department as well as enforce and comply with the laws

of the State of Ohio as they may apply to the monetary support of the institutions managed, administered and maintained by the State of Ohio through its Department of Mental Hygiene and Correction.

4. Plaintiff is the natural father of a sixteen year old boy who was diagnosed by competent medical authority in December of 1956 as being completely helpless, physically incapacitated, and afflicted with the following ailments and infirmities:

> Chronic Brain Syndrome associated with diseases and conditions due to pre-natal influences. Paraplegia and mental deficiency. This is not a congenital anomaly since it is based on Cranial Arnoid Chiari Syndrome. Spina Bifida with meningecele sac in lumbo-sacral area accompanied with Hydrocephalus. Strabismus and Scoliosis.

5. In August of 1956, plaintiff applied for the admittance of his son to an institution being operated by the Department of Mental Hygiene and Correction, Division of Mental Hygiene, and in the process of pursuing such application, discovered that for his son to receive the medical care and treatment necessitated by his illness, plaintiff must irrevocably commit him to the care of the Department as a ward of the State of Ohio and abandon any and all control and dominion over the well being and care of his said son. Said child is presently an inmate at the Columbus State School in the City of Columbus, Ohio, and has been so confined since August of 1956.

6. As a mandatory condition precedent to the complete and irrevocable surrender of his son's care and upbringing to the State of Ohio as its ward, Plaintiff was required to sign an instrument whereby he was obligated to pay assessments as levied by the Bureau of Support for alleged reimbursement to the State of Ohio for its costs of maintaining his son.

7. At the time of the Probate Decree ordering his son's commitment, the rate for support being charged by the Bureau of Support was $15.75 per week. Plaintiff, being a man of limited means, met with the agent of the Bureau of Support and agreed to make a weekly payment of $2.80. The Bureau of Support defined its position as to the difference between plaintiff's weekly compromise payment of $2.80 and the then Bureau computed per capita rate of $15.75 in a notice dated October 6, 1956, a copy of which is marked Exhibit "A" and attached hereto to be incorporated as if rewritten herein.

8. On December 20, 1957, Defendant Burke forwarded another notice, a copy of which is marked Exhibit "B" and attached hereto, to inform Plaintiff that the rate had been increased to $21.00 per week; which left a balance of $18.20 accruing each week to become a charge against Plaintiff, his wife or children, or his estate, so long as his son remained alive.

9. On December 14, 1959, Plaintiff received a further demand from Defendant Burke, a copy of which is marked Exhibit "C" and attached hereto which advised him that the rate had been recomputed to $24.50 per week. This increased the weekly accrual against plaintiff's children, his wife and his estate to $21.70.

10. The net result of these increases in the weekly rate, the same having resulted in an increment of $8.75 or fifty per cent in less than four years, has left plaintiff owing the State of Ohio $3,133.20 as of March 31, 1960.

11. And further, Section 5121.03 of the Ohio Revised Code specifically provides that collections in excess of five dollars and fifty cents per week be placed in a rotary fund for the general use of the Division of Mental Hygiene, Department of Mental Hygiene and Correction. The rotary fund to be so subsidized by Plaintiff's estate, is allocated

by the controlling statute to the use of the Department's Bureau of Psychiatric Training and Research; a division of the Department of Mental Hygiene and Correction which cannot in any way be of use or value to Plaintiff's son.

12. Plaintiff has been advised that his past obligations may be collected through legal certification to the Attorney General of the State of Ohio, at such time as may be deemed appropriate; and that any property which he may own at the time of his death is subject first to a claim of the State of Ohio through Defendant Burke despite the needs of his family by way of shelter, food, education and the other necessities of life. Plaintiff is powerless to escape the incessant increases in the per capita charges for the maintenance of his mentally retarded son since said child is a ward of the State and may be released from the institutional program only at the discretion of Defendant Haines. Further, unless plaintiff is able to receive from this Court of Equity, he will be deprived of any hope of ever acquiring the peace of mind, quiet and useful enjoyment of his property, security and the benefits of being a citizen of the State of Ohio and the United States of America which the Constitutions of both of those governments set forth and guarantee in his behalf.

13. Plaintiff says that the facts stated above result in his being denied his rights as a citizen and taxpayer by reason of inequitable treatment; and that he is deprived of inalienable safeguards guaranteed by the Constitution of the State of Ohio.

14. In addition to the foregoing inequities and unconstitutional invasions of plaintiff's rights as a citizen and taxpayer, Plaintiff states that the assessments that have been levied against him by Defendants herein and the

Bureau of Support for the past four years, are invalid for the following reasons:

A. Article VII, Section I, of the Constitution of the State of Ohio provides for the support by the State of Ohio of Institutions for the benefit of the insane, blind, and deaf and dumb. Since there is no charge being made by the State of Ohio for the support of inmates in the schools for the deaf and dumb and blind, there results an invalid discrimination or classification when assessments are levied against one segment within a class where uniformity is required by Article II, Section 26 of the Constitution of the State of Ohio.

B. Sections 5121.03 through 5121.06, inclusive, of the Ohio Revised Code setting out the rate and method of collecting the assessment for the support of inmates of benevolent institutions under the jurisdiction of the Department of Mental Hygiene and Correction, are invalid because said sections abuse the delegation of legislative authority to assess and provide for the collection of taxes and assessments.

C. Sections 5121.03, 5121.04 and 5121.05 of the Ohio Revised Code are invalid because through the investment of power in the Supervisor of the Bureau of Support of the Department of Mental Hygiene and Correction they deprive the taxpayers assessed thereunder the privilege and protection of due process of law in derrogation of the Constitution of the State of Ohio.

D. Defendants herein in their execution of Sections 5121.03 through 5121.06 inclusive, of the Ohio Revised Code have illegally and arbitrarily computed the rate of support to be charged plaintiff from the time of the commitment of his son.

E. Sections 5121.03 through 5121.06 inclusive, of the Ohio Revised Code in the force and effect of their administration and execution by Defendants herein are in violation of the Fourteenth Amendment of the Constitution of the United States in that they result in a deprivation of property without due process of law and deny Plaintiff equal protection of the laws of the State of Ohio.

15. And further, Plaintiff states that he has no adequate remedy at law and that unless Defendants are enjoined from collection of the assessments set forth herein he will suffer irreparable harm.

16. WHEREFORE, Plaintiff prays that said assessments presently claimed as due and owing by him to the State of Ohio be declared void and without effect; that Defendants and each of them be enjoined from collecting and taking any action to collect said assessments or any part thereof, and that upon final hearing of this cause said injunction may be made perpetual, and for all other and further relief to which Plaintiff may be by law or equity entitled.

EAGLESON AND CHILDERS
By JOHN S. BOWERS
Attorneys for Plaintiff.

VERIFICATION

COUNTY OF FRANKLIN)
) SS:
STATE OF OHIO)

Before me, a notary public in and for said County, appeared Ward M. Miller, who after being duly cautioned and sworn says that he is the Plaintiff in this action and that the facts stated and allegations contained in the foregoing petition are true.

WARD M. MILLER

Sworn to before me and subscribed in my presence this ..... day of October, 1960.

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Notary Public.

My Commission Expires.....